

COPY

PATENT

Attorney Docket No. 1759.15103

Applicant or Patentee: Robert M. Scribner et al.Serial or Patent No.: 09/ 088,459Filed or Issued: June 1, 1998For: Expandable Preformed Structures for Deployment in Interior Body Regions

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY  
STATUS (37 CFR 1.9(F) and 1.27(c) - SMALL BUSINESS CONCERN**

I hereby declare that I am

       the owner of the small business concern identified below:  
  X   an official of the small business concern empowered to act on behalf of the  
concern identified below:

NAME OF CONCERN  
ADDRESS OF CONCERN

KYPHON INC.  
3110 CORONADO DRIVE  
SANTA CLARA, CALIFORNIA 95054

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.3-18, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees under Section 41(a) and (b) of Title 35, United States Code, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third-party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed, to and remain with the small business concern identified above with regard to the invention, entitled

EXPANDABLE PREFORMED STRUCTURES FOR DEPLOYMENT IN INTERIOR BODY REGIONS  
by inventor(s) Robert M. Scribner and Karen D. Talmadge

described in

       the specification filed herewith.  
  X   application serial no. 09/ 088,459 , filed June 1, 1998  
       patent no.                      , issued                     

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights to the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as a small business concern under 37 CFR 1.9(d) or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27).

(Small Entity-Small Business [7-4]-page 1 of 2)

T-05140-09222300

COPY

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_☐ INDIVIDUAL☐ SMALL BUSINESS CONCERN☐ NONPROFIT ORGANIZATIONNAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_☐ INDIVIDUAL☐ SMALL BUSINESS CONCERN☐ NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small business entity is no longer appropriate. (37 CFR 1.28(b)).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Karen D. Talmadge  
TITLE OF PERSON OTHER THAN OWNER President ~~Executive Vice President~~  
ADDRESS OF PERSON SIGNING 3110 Coronado Drive  
Santa Clara, California 95054

Karen D. Talmadge  
SIGNATURE

21 Dec 98  
Date

T06T40:05E2E50

PATENT

Attorney's Docket No. 1759.15103

COPY

**COMBINED DECLARATION AND POWER OF ATTORNEY  
(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL,  
CONTINUATION OR CIP)**

As a below named inventor, I hereby declare that:

**TYPE OF DECLARATION**

This declaration is of the following type: (check one applicable item below)

- ☒ original  
☐ design  
☐ supplemental

**NOTE:** If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application do not check next item; check appropriate one of last three items.

- ☐ national stage of PCT

**NOTE:** If one of the following 3 items apply then complete and also attach **ADDED PAGES FOR DIVISIONAL, CONTINUATION OR CIP**.

- ☐ divisional  
☐ continuation  
☐ continuation-in-part (CIP)

**INVENTORSHIP IDENTIFICATION**

**WARNING:** If the inventors are each not the inventors of all the claims an explanation of the facts, including the ownership of all the claims at the time the last claimed invention was made, should be submitted.

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**TITLE OF INVENTION**

**Expandable Preformed Structures for Deployment in Interior Body Regions**

**SPECIFICATION IDENTIFICATION**

the specification of which: (complete (a), (b) or (c))

- (a) ☐ is attached hereto.  
 (b) ☒ was filed on June 1, 1998 as ☒ Serial No. 09/088/459  
 or ☐ Express Mail No., as Serial No. not yet known \_\_\_\_\_  
 and was amended on \_\_\_\_\_ (if applicable).

**NOTE:** Amendments filed after the original papers are deposited with the PTO which contain new matter are not accorded a filing date by being referred to in the declaration. Accordingly, the amendments involved are those filed with the application papers or, in the case of a supplemental declaration, are those amendments claiming matter not encompassed in the original statement of invention or claims. See 37 CFR 1.67.

- (c) ☐ was described and claimed in PCT International Application No. \_\_\_\_\_ filed on \_\_\_\_\_  
 and as amended under PCT Article 19 on \_\_\_\_\_ (if any).

F0310: 05E2E860

COPY

## ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37, Code of Federal Regulations, § 1.56

*(also check the following item, if desired)*

- ☐ In compliance with this duty there is attached an information disclosure statement in accordance with 37 CFR 1.98.

## PRIORITY CLAIM (35 U.S.C. § 119)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

*(complete (d) or (e))*

- (d) ☒ no such applications have been filed.
- (e) ☐ such applications have been filed as follows.

NOTE: Where item (c) is entered above and the International Application which designated the U.S. itself claimed priority check item (e), enter the details below and make the priority claim.

A. PRIOR FOREIGN/PCT APPLICATION(S) FILED WITHIN  
12 MONTHS (6 MONTHS FOR DESIGN) PRIOR TO THIS  
APPLICATION AND ANY PRIORITY CLAIMS UNDER  
35 U.S.C. § 119

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 37 USC 119
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

00837350-041904

COPY

ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO THIS U.S. APPLICATION

**NOTE:** If the application filed more than 12 months from the filing date of this application is a PCT filing forming the basis for this application entering the United States as (1) the national stage, or (2) a continuation, divisional, or continuation-in-part, then also complete **ADDED PAGES TO COMBINED DECLARATION AND POWER OF ATTORNEY FOR DIVISIONAL, CONTINUATION OR CIP APPLICATION** for benefit of the prior U.S. or PCT application(s) under 35 U.S.C. S 120.

### POWER OF ATTORNEY

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith. *(List name and registration number)*

Arnold J. Ericson (16,879)  
Allan B. Wheeler (18,180)  
Daniel D. Ryan (29,243)

Ralph G. Hohenfeldt (17,717)  
Allan O. Maki (20,623)  
Joseph A. Kromholz (34,204)

*(check the following item, if applicable)*

- ☒ Attached as part of this declaration and power of attorney is the authorization of the above-named attorney(s) to accept and follow instructions from my representative(s).

### SEND CORRESPONDENCE TO

Daniel D. Ryan  
RYAN KROMHOLZ & MANION, S.C.  
633 West Wisconsin Avenue  
Suite 1900  
Milwaukee, Wisconsin 53203

### DIRECT TELEPHONE CALLS TO: (Name and telephone number)

Daniel D. Ryan  
(414) 271-6555

### DECLARATION

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

10340-05E2E650

SIGNATURE(S)

COPY

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor

ROBERT (GIVEN NAME) M (MIDDLE INITIAL OR NAME) SCRIBNER (FAMILY (OR LAST NAME))  
Inventor's signature \_\_\_\_\_  
Date 12-21-98 Country of Citizenship USA  
Residence LOS ALTOS, CALIFORNIA  
Post Office Address 1133 MIGUEL AVENUE  
LOS ALTOS, CALIFORNIA 94024

Full name of second joint inventor, if any

KAREN (GIVEN NAME) D (MIDDLE INITIAL OR NAME) TALMADGE (FAMILY (OR LAST NAME))  
Inventor's signature \_\_\_\_\_  
Date 12-21-98 Country of Citizenship USA  
Residence PALO ALTO, CALIFORNIA  
Post Office Address 2320 BRYANT STREET  
PALO ALTO, CALIFORNIA 94301

Full name of third joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) (FAMILY (OR LAST NAME))  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_

Full name of fourth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) (FAMILY (OR LAST NAME))  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_

Full name of fifth joint inventor, if any

(GIVEN NAME) (MIDDLE INITIAL OR NAME) (FAMILY (OR LAST NAME))  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_

CHECK PROPER BOX(ES) FOR ANY OF THE FOLLOWING ADDED PAGE(S) WHICH  
FORM A PART OF THIS DECLARATION

- ☐ Signature for sixth and subsequent joint inventors. Number of pages added \_\_\_\_\_

\*\*\*

- ☐ Signature by administrator(trix), executor(trix) or legal representative for deceased or  
incapacitated inventor. Number of pages added \_\_\_\_\_

\*\*\*

- ☐ Signature for inventor who refuses to sign or cannot be reached by person authorized under 37  
CFR 1.47. Number of pages added \_\_\_\_\_

\*\*\*

- ☐ Added pages to combined declaration and power of attorney for divisional, continuation, or  
continuation-in-part (CIP) application.

- ☐ Number of pages added \_\_\_\_\_

\*\*\*

- ☐ Authorization of attorney(s) to accept and follow instructions from representative

\*\*\*

*(If no further pages form a part of this declaration then end this declaration with this  
page and check the following item:)*

- ☒ This declaration ends with this page

09837350-044801  
T08TH0-05EZE860

COPY

RECORDATION FORM COVER SHEET  
PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE

(Rev. 6-93)

Patent and Trademark Office

Tab settings &gt;&gt;&gt;▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

Robert M. SCRIBNER and Karen D. TALMADGE

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

## 3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other \_\_\_\_\_

Execution Date: 12/21/1998

## 2. Name and address of receiving party(ies)

Name: KYPHON INC.

Internal Address: \_\_\_\_\_

Street Address: \_\_\_\_\_

3110 Coronado Drive

City: Santa Clara State: CA ZIP: 95054

Additional name(s) & address(es) attached: ☐ Yes ☒ No

## 4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

## A. Patent Application No.(s)

09/088,459

## B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Daniel D. Ryan

Internal Address: \_\_\_\_\_

Ryan Kromholz &amp; Manion, S.C.

Street Address: \_\_\_\_\_

633 West Wisconsin Avenue

City Milwaukee State: WI ZIP: 53203

## 6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed☐ Authorized to be charged to deposit account

## 8. Deposit account number:

06-2360

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

## 9. Statement and signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Daniel D. Ryan

Name of Person Signing

Signature

12/22/1998

Date

Total number of pages including cover sheet, attachments, and document: ☐



## ASSIGNMENT

COPY

WHEREAS, Robert M. Scribner of Los Altos, California and Karen D. Talmadge of Palo Alto, California (hereinafter referred to as ASSIGNORS), have invented and own a certain invention entitled Expandable Preformed Structures for Deployment in Interior Body Regions for which application for Letters Patent of the United States has been executed on even date herewith (attorney's Docket No. 1759.15103);

WHEREAS, Kyphon Inc. of Santa Clara, California (hereinafter referred to as ASSIGNEE), is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries;

NOW THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that in consideration of the payment of ASSIGNEE to ASSIGNORS of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration, ASSIGNORS hereby sell, assign and transfer to ASSIGNEE the full and exclusive right, title and interest to said invention in the United States and its territorial possessions and in all foreign countries and to all Letters Patent or similar legal protection in the United States and its territorial possessions and in any and all foreign countries to be obtained for said invention by said application or any continuation, division, renewal, substitute or reissue thereof or any legal equivalent thereof in a foreign country for the full term or terms for which the same may be granted.

ASSIGNORS hereby covenant that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment and sale;

ASSIGNORS further covenant that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNORS and will testify as to the same in any interference or litigation related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof in any foreign country which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day of

Dec

, 1998.

  
Robert M. Scribner

COPY

State of \_\_\_\_\_ )  
 )ss.  
 County of \_\_\_\_\_ )

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998,  
 the above named Robert M. Scribner, to me known to be the person who executed the foregoing  
 Assignment and acknowledged the same as his free act and deed.

\_\_\_\_\_  
 Notary Public  
 My commission expires \_\_\_\_\_

(Seal)

\*\*\*\*\*

IN WITNESS THEREOF, I have hereunto set hand and seal this 21 day  
 of Dec, 1998.

Karen D. Talmadge  
 Karen D. Talmadge

State of \_\_\_\_\_ )  
 )ss.  
 County of \_\_\_\_\_ )

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998,  
 the above named Karen D. Talmadge, to me known to be the person who executed the foregoing  
 Assignment and acknowledged the same as his free act and deed.

\_\_\_\_\_  
 Notary Public  
 My commission expires \_\_\_\_\_

(Seal)